
1991 Wis Eth Bd 6
SOLICITATION

You may solicit contributions for a foundation if: (1) you do not invoke the title or prestige of your office to solicit; (2) you do not rely upon the state's time, facilities, supplies or services not generally available to all Wisconsin citizens; (3) any response to your solicitations could not reasonably be expected to influence your official judgement or be considered a reward for past actions; and (4) you do not solicit any lobbyist or lobbyist's employer. Eth. Bd. 640.

February 21, 1991

Facts

[1] This opinion is based upon these understandings:

- a. You are a state public official.
- b. You have been asked to solicit funds for an organization associated with a non-profit foundation.
- c. You are a director and an officer of the foundation and the state agency's appointee to the foundation's board.

Question

[2] The State of Wisconsin Ethics Board understands your question to be:

Does the Ethics Code pose any obstacles to your soliciting funds for the organization on behalf of the foundation?

Discussion

[3] Two provisions of the Ethics Code seem most pertinent to your inquiry -- §§ 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*. Reduced to its elements 19.45(2) provides:

No state public official
May use his or her position
To obtain financial gain or anything of substantial value
For the official's private benefit or for an organization with
which the official is associated;¹

¹ § 19.45(2), *Wisconsin Statutes*, provides:

[4] and 19.46(1)(b) provides:

No state public official
May use his or her public position
In a way that produces a substantial benefit
For an organization with which the official is associated.²

[5] You are a state public official. You are associated with the foundation by virtue of your being a director of the foundation.³

[6] The Ethics Board consistently has found that use of public position includes use of the position's title or prestige.⁴ Accordingly, the Board has advised state public officials not to solicit funds for organizations with which they are associated, including charitable organizations, if the solicitation involved the prestige or other use of the officials' public positions.⁵ Thus, as we have said, any "solicitation should not mention your official title or the state office you hold or link you in any way to your public position unless your name is only set forth in a list of the organization's directors and your name and information about you is listed in the same manner and with the same degree of prominence as is information about all the other directors."⁶

19.45(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.

² § 19.46(1)(intro.) and (b), *Wisconsin Statutes*, provides:

19.46(1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:
(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

³ §§ 19.42(2) and (11), *Wisconsin Statutes*, provide:

19.42(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

(11) "Organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

⁴ 10 Op. Eth. Bd. 47 (1988), 43 (1987); 9 Op. Eth. Bd. 45, 46 (1987), 21, 22 (1986); 8 Op. Eth. Bd. 61 (1985); 7 Op. Eth. Bd. 22 (1983); 5 Op. Eth. Bd. 98 (1982), 57 (1981); 4 Op. Eth. Bd. 63, 46 (1980); 3 Op. Eth. Bd. 54 (1979).

⁵ 5 Op. Eth. Bd. 97 (1982); 3 Op. Eth. Bd. 53 (1979).

⁶ 3 Op. Eth. Bd. 53, 54 (1979)

And, of course, you should not use the state's time, facilities, supplies, or services not generally available to all Wisconsin citizens in your solicitations.

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[7] In addition, § 19.45(3), *Wisconsin Statutes*, would be an obstacle to your soliciting contributions for the foundation if it could be demonstrated that an organization's or individual's contribution or failure to contribute could reasonably be expected to influence your official judgment or was a reward for past actions.⁸ Thus, you should not solicit from individuals or organizations that have a special interest in the Legislature's actions.

[8] Finally § 13.625(3), *Wisconsin Statutes*, also prohibits an elected official from soliciting anything of pecuniary value from a lobbyist or a lobbyist's employer.⁹

Advice

[9] The Ethics Board advises that consistent with the Ethics Code, you may solicit contributions for the foundation if: (1) you do not invoke the title or prestige of your office to solicit; (2) you do not rely upon the state's time, facilities, supplies or services not generally available to all Wisconsin citizens; (3) any response to your solicitations could not reasonably be expected to influence your official judgment or be considered a reward for past actions; and (4) you do not solicit any lobbyist or lobbyist's employer.

⁷ Id.

⁸ § 19.45(3), *Wisconsin Statutes*, provides:

19.45(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

⁹ § 13.625(3), *Wisconsin Statutes*, provides:

13.625(3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c) (2), (5), (6) and (7). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).